

07.01.2021
Court No. 19
Item No.29
CP

C.O. 1523 of 2020

Messrs. Reliance Industries Limited
vs.
Sri Nikunja Behari Jana & ors.

(via video conference)

Mr. Sumanta Biswas

....for the petitioner.

This revisional application was entertained on December 10, 2020 by this court and the petitioner was directed to serve a copy of the same as also a server copy of the order upon the opposite parties. Affidavit of service was filed on the earlier occasion showing that the opposite parties had been sent a copy of the revisional application along with the server copy of the order under a covering letter of the learned advocate for the petitioner, Mr. Biswas. The matter came up again on December 17, 2020. As the affidavit of service did not indicate that the opposite parties had been served and no track report had been filed downloaded from the website of India Post, the learned advocate for the petitioner was directed to serve copies of the revisional application upon the learned advocates appearing in the court below on behalf of the plaintiff and other defendants.

Today, affidavit of service has been filed with the track reports which confirm delivery upon the

surviving opposite parties. A letter has been filed with the receipt obtained from the learned advocates for the plaintiff as also the contesting defendants which has been annexed to the affidavit of service. The learned advocates appearing in the matter before the court below have also been served.

Even today, none appears on behalf of the opposite parties although, the opposite parties and their learned advocates have accepted service by endorsing their signatures on the covering letter dated December 17, 2020 written by the learned advocate for the petitioner Mr. Biswas.

This is a simple matter and an innocuous prayer has been made by the petitioner that substitution of the deceased respondent nos. 2 and 8, in J. Misc Case No. 71 of 2018 namely, Sri Haripada Karan and Smt. Padma Mondal, should be allowed in J Misc. Case No. 71 of 2018 arising out of Title Suit No. 124 of 2006, pending before the learned Civil Judge (Junior Division), 2nd Court, Paschim Medinipur. By order dated November 21, 2020, the learned court below rejected the application for substitution filed by the petitioner in J Misc Case No. 71 of 2018 for substituting the heirs and legal representatives of Sri Haripada Karan and Smt. Padma Mondal, since deceased. It appears that when the petitioner attempted to serve copies of J. Misc Case upon the said respondents therein, the postal

articles came back with the endorsement 'Dead'. Thereafter, the petitioner filed the substitution application. The learned court below rejected the application for substitution on the ground that the petitioner could not produce any document from the local authorities to show that persons sought to be substituted were actually the legal heir and representatives of the deceased respondents and that there were no other heirs of the deceased respondents except the ones who were sought to be substituted.

The opposite parties and the learned advocates for the opposite parties have received the copy of the revisional application and also server copies of the orders. In my view, there is no reason to keep this revisional application pending as it is obvious that the opposite parties are intentionally avoiding appearance before this court. The suit was decreed *ex parte* and the delay in disposal of Order 9 Rule 13 application would enure to the benefit of the decree holder. Substitution is a matter of course but is absolutely essential for progress of any litigation in a proper manner. It is a mere formality.

It is not a requirement that the party applying for substitution is supposed to file documents to prove that there were no other heirs or legal representatives except the ones sought to be brought on record. Once the substitution is allowed and the

heirs are brought on record, if there are other remaining heirs and legal representatives, the parties brought on record may always point out the fact before the court. In any event, if the petitioner proceeds without incorporating all the heirs then it will do so at its own risk and peril. The order impugned does not have any legs to stand on and is set aside. However along with the application for substitution an application for condonation of delay should have been filed. As the plaintiff is the principal respondent in the Misc Case, the defendants are proforma parties but the factum of death of any defendant should be recorded and their heirs should be brought on record as a formality and to regularize the proceeding, although no substantial relief is claimed against them.

The application under Order 22 Rule 4 was filed within 90 days from knowledge of the death. It is true that the petitioner did not have any way of knowing about the death and hence the application could not be filed within the prescribed period. The limitation started running from the date of death, but belated knowledge could be a good ground for condonation of delay. The provisions of Order 22 Rule 4 (4) is applicable here. The application for substitution dated December 12, 2018 being Annexure P-5 to this revisional application could have been allowed here and now but for the absence

of an application under Section 5 of the Limitation Act for condonation of delay in filing the substitution application.

Once such application is filed, the learned court below shall dispose of the already pending application for substitution along with the application for condonation of delay in the light of the aforesaid observations. An opportunity of hearing shall be given to all parties.

The revisional application is disposed of. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)